

HEADQUARTERS
1101 VERMONT AVE., NW, STE. 500
WASHINGTON, DC 20005-6306
TELEPHONE 202.898.0089
FACSIMILE 202.898.0159
HTTP://WWW.AAE.ORG

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WESTERN REGION OFFICE
SAN FRANCISCO, CA



January 17, 2001

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
TW-A325
Washington, DC 20554

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JAN 17 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Dear Ms. Salas:

The American Advertising Federation is pleased to submit the enclosed comments in the matter of Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167.

Sincerely,

Jeff Perlman
Executive Vice President Government Affairs
General Counsel

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A B C D E

Before the
Federal Communications Commission
Washington, DC

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

MM Docket No. 00-167

**Children's Television Obligations
Of Digital Television Broadcasters**

**Comments of the
American Advertising Federation**

The American Advertising Federation (AAF) appreciates the opportunity to comment in the matter of Children's Television Obligations of Digital Television Broadcasters. The Commission has raised a number of significant issues in the Notice of Proposed Rulemaking. AAF will respond in more detail to a number of the specific issues. As a general matter, however, we believe that it is premature for the Commission to seriously consider promulgating comprehensive rules governing DTV broadcasters.

The American Advertising Federation is the only national association that represents all aspects of the advertising industry - advertisers, advertising agencies and the media. Membership includes 130 national and global corporations and 50,000 advertising professionals in 220 advertising associations nationwide. Our media membership is



national, including broadcast and cable television networks, and local, with many cable service providers and local broadcasters.

DTV is an industry that is not yet in its infancy. DTV broadcasters will be going from a world in which they have one signal, and one service option, to provide to consumers, to one in which multiple signals and options are available. While DTV broadcasters may anticipate what kinds of services and programming they will offer, only time will tell what options will prove to be successful with consumers.

Given this state of uncertainty, the Commission should refrain from promulgating rules that would only serve to limit broadcasters' options as they make their way in the new digital universe. Especially rules that are based in large part upon an earlier and different technology. Such promulgation would not only harm DTV broadcasters, but would do a disservice to consumers, as well. After all, success of a broadcast television outlet is measured by consumers served. If a DTV service fails (because of regulatory limitations or a poor business plan), then by definition a significant number of consumers are not being served.

In addition to these general comments, AAF has concerns about a number of specific provisions in the notice.

The Commission should refrain from placing limitations on interactive capabilities of DTV broadcasters.

The Commission seeks comment on the issue of interactive programming. Specifically, on a proposal by the Center for Media Education and others that direct links between commercial websites during children's programming. AAF believes that this is a deeply flawed solution in search of a problem.

At this point in time, direct links between programming and the Internet are extremely limited, and generally limited to specific locations and test markets. To prohibit such links, which have the potential to greatly enhance a child's entertainment and educational experience, would stifle innovation and unnecessarily limit DTC broadcasters.

Congress and the Commission have long recognized the necessary role that advertising plays in supporting children's television on commercial outlets. This support has been very successful for all concerned. The advertising industry has provided that support in an overwhelmingly responsible way. When problems have occurred, the Commission and its sister agency, the Federal Trade Commission, have had sufficient tools to deal with them. There is no reason to believe that future problems, should they occur, cannot be handled in a similar manner.

Should a rule prohibiting links between commercial websites and children's programming be adopted it would be difficult, if not impossible to implement, and could have First Amendment problems. The distinction between a commercial and non-

commercial website is not always easily determined. It is easy to imagine an educational or news service website directed to children (or adults). The vast majority of the site would be dedicated to the news or educational mission. However, a small percentage of the site might offer for sale some resources referred to in other areas. Would such a site be deemed commercial or educational?

Specific examples of the confusion exist. The Public Television System website pbs.org, includes a children's area with some educational material. The same site offers links to purchase videos and compact discs from the Ken Burn's series *Jazz*. Would pbs.org then be considered a commercial website?

Finally there is the question of jurisdiction. It is clear the Commission has jurisdiction over DTV broadcasters. It is less so whether the Commission has jurisdiction over the Internet or potential links between the two. As such, it is likely that the proposed rule is outside the Commission's purview.

The Commission should not change the current definition of commercial matter.

Current Commission policy limits the amount of commercial matter in children's programming to 10.5 minute per hour on weekends and 12 minutes per hour on weekdays. The Commission asks for comments on whether the definition of commercial matter should be expanded to include currently excluded program "interruptions" such as

promotions of upcoming educational programs or certain types of public service announcements.

AAF submits that these limits should remain unchanged. We believe that these “interruptions” are not what Congress of the Commission has historically understood to be commercial matter and no compelling reason has been advanced for making the change.

In fact, the vast majority of these so-called “interruptions” are in fact beneficial to viewers. Promotions of other education programs help to make viewers aware of the programs and build an audience. After all, the educational programming requirement would be an empty promise if the shows never reached the intended audience of children.

Likewise, public service announcements are designed to be educational. They pass along an abundance of important information which may not fit in a more traditional programming setting. Generally speaking, they are much more educational than commercial under any definition.

Finally, economic realities mean that the proposal would likely result in the decrease in quality of educational programming, the audience for the programs and non-programming public service information provided during children’s television programming. Defining promotions and public service announcements as commercial matter means that the limited time available must accommodate these materials, as well

as paid advertising. Assuming they are not eliminated completely - which in itself would have negative consequences - broadcasters would be forced to provide more programming material with fewer revenue dollars.

The Commission should not adopt a rating system for promotional materials aired during children's programming.

The notice raises the issue of the airing of "inappropriate" program or product promotions and whether the Commission should require that such promotions be rated and encoded so that they can be screened by V-Chip technology. The AAF strongly objects to any such requirement.

First, such a requirement is beyond the Commission's authority. Similar industry rating of video programming is a voluntary program. As the Commission well knows, ratings give parents guidance as to the age appropriateness of the programs, and general reasons (language, violence, etc.) for the rating. Congress gave the Commission the authority to review - but not mandate - these voluntary ratings. No authority was granted to extend the ratings into a mandatory system for promotions or commercial messages.

Such a system smacks of censorship and would clearly violate the First Amendment protections of commercial speech. How would government officials overseeing the program determine what programs or products are inappropriate for children?

Broadcast and cable outlets screen promotions and commercial messages to insure that inappropriate material is not broadcast during children's programming. It is in neither the advertisers nor the broadcasters interests for such material to air during these times.

Children are unlikely to be consumers of such products or programming, and advertisers nor broadcasters want to alienate parents by exposing their children to inappropriate material.

While no system, including V-Chip technology, is fail-safe, we believe this self-regulatory approach does an outstanding job while not violating any First Amendment protections.

Conclusion

The AAF appreciates the important issues raised by the Notice of Proposed Rulemaking. However, for the reasons expressed herein, we respectfully submit that the Commission refrain from promulgating additional obligations on children's television on DTV broadcasters at this time.

